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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,057	12/02/2003	J. Edward Cichanowicz	023407-00001	2939

4372 7590 05/19/2006
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EXAMINER

JOHNSON, EDWARD M

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/725,057

Applicant(s)

CICHANOWICZ, J. EDWARD

Examiner

Edward M. Johnson

Art Unit

1754

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 17.
Claim(s) rejected: 15, 16 and 18-22.
Claim(s) withdrawn from consideration: 1-14 and 23-25.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



Edward M. Johnson
Primary Examiner
Art Unit: 1754

Continuation of 11. does NOT place the application in condition for allowance because: It is argued that however, the present claims require a step that the heat exchanger "removes heat from the flue gas". This is not persuasive because Applicant appears to admit that the flue gas is "later cooled for desulfurization" and also because Hums discloses avoiding overheating when an upper threshold temperature is reached by reducing combustion air (column 6, lines 28-34), which would inherently remove heat.

It is argued that in contrast, Hums requires exactly the opposite. This is not persuasive for the reasons above. Both addition and removal of heat are disclosed.

It is argued that thus, Hums does not teach (or suggest)... by the present claims. This is not persuasive for the reasons above.

It is argued that as mentioned above, Hums does not teach... the present claims. This is not persuasive for the reasons above.

It is argued that Applicant notes that Hums employs a different catalyst... NO removal chemistry. This is not persuasive because Applicant merely claims nitrogen oxide reducing catalyst and Hums discloses a nitrogen oxide reducing catalyst (abstract). It is noted that the features upon which applicant relies (i.e., reducing to "molecular nitrogen and water") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is argued that Applicant further notes that conventional flue gas desulfurization... advanced FGD process. This is not persuasive because a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

It is argued that regarding the air injected in Hums... is consumed. This is not persuasive because Applicant appears to admit that the flue gas is "later cooled for desulfurization" and also because Hums discloses avoiding overheating when an upper threshold temperature is reached by reducing combustion air (column 6, lines 28-34), which would inherently remove heat.

It is argued that Moller et al., which is cited to show... deficiencies of Hums. This is not persuasive because Moller is not relied upon for Applicant's alleged deficiencies of Hums. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is argued that furthermore, Applicants note that Hums specifically teaches against using... oxides reducing catalyst. This is not persuasive because Applicant appears to admit that the flue gas is "later cooled for desulfurization" and also because Hums discloses avoiding overheating when an upper threshold temperature is reached by reducing combustion air (column 6, lines 28-34), which would inherently remove heat. Both addition and removal of heat are disclosed.